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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JASMINE MILLER,  
Plaintiff,  
v.  
AMAZON.COM INC.,  
Defendant.

Case No. [17-cv-03488-MMC](#)

**ORDER AFFORDING DEFENDANT  
OPPORTUNITY TO FILE  
SUPPLEMENT TO DECLARATION  
RE: PLAINTIFF'S ADMINISTRATIVE  
MOTION TO FILE DOCUMENT  
UNDER SEAL**

Before the Court is plaintiff's "Administrative Motion to File Document Under Seal," filed February 15, 2019, by which motion plaintiff seeks leave to file under seal an unredacted version of the Fourth Amended Complaint ("4AC"),<sup>1</sup> on the ground that said unredacted version contains information defendant asserts is confidential.<sup>2</sup>

Under the Local Rules of this District, where a party seeks to file under seal material designated confidential by another party, the submitting party must file a motion for a sealing order, see Civil L.R. 79-5(d)-(e), and "[w]ithin 4 days of the filing of the Administrative Motion to File Under Seal, the Designating Party must file a declaration . . . establishing that all of the designated information is sealable," see Civil L.R. 79-5(e)(1).

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<sup>1</sup>A redacted version of the 4AC has been filed in the public record.

<sup>2</sup>Plaintiff's counsel states he "has no personal knowledge as to why information in the [4AC] is confidential or why it should be kept under seal." (See Marron Decl. ¶ 3.)

1       Here, although defendant has not filed a declaration in response to plaintiff's  
2 administrative motion, it appears defendant is relying on a declaration by defendant's  
3 counsel, filed February 5, 2019, in support of a stipulation to withdraw a prior version of  
4 the 4AC, which pleading, according to said declarant, contained confidential information.  
5 The Court next considers whether the above-referenced declaration establishes that the  
6 operative 4AC, which version was filed after the above-referenced 4AC was withdrawn,  
7 contains sealable material. See id.<sup>3</sup>

8       In his declaration, counsel states the 4AC includes "information about Amazon's  
9 business that Amazon considers confidential, that has not been publicly disclosed, and  
10 that was designated as 'Confidential' before being disclosed to [p]laintiff's counsel in  
11 discovery in another litigation pursuant to the terms of a Protective Order." (See  
12 Battenfeld Decl. ¶ 3.) Further, according to said declarant, public disclosure of the  
13 subject information would "enable Amazon's competitors to imitate or possibly exploit  
14 [such] information" (see id. ¶ 9), "would substantially undermine Amazon's ability to  
15 compete in the market" (see id. ¶ 10), and "could place Amazon at a serious competitive  
16 disadvantage" (see id.)

17       A party seeking to seal a "judicial record," such as portions of a complaint, "must  
18 articulate compelling reasons supported by specific fact[s] . . . that outweigh the general  
19 history of access and the public policies favoring disclosure, such as the public interest in  
20 understanding the judicial process." See Kamakana v. City and County of Honolulu, 447  
21 F.3d 1172, 1178-79 (9th Cir. 2006) (internal quotations, alteration and citations omitted);  
22 see also, e.g., Delphix Corp. v. Actifio, Inc., 2014 WL 4145520, at \*2 (N.D. Cal. August  
23 20, 2014) (considering whether movant established "sufficiently compelling reasons" to  
24 seal portions of proposed amended complaint). A showing that consists of "conclusory  
25 statements about the content of the documents – that they are confidential and that, in

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<sup>3</sup>The version of the 4AC that was withdrawn and the operative version of the 4AC  
28 are materially indistinguishable.

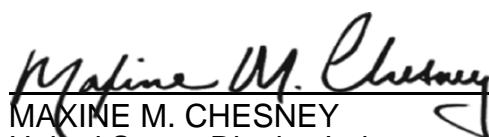
1 general, their production [to the public] would hinder [the designating party's] future  
2 operations" – is insufficient to establish the requisite "compelling reasons." See  
3 Kamakana, 447 F.3d at 1182; see also Oliner v. Kontrabecki, 745 F.3d 1024, 1026-27  
4 (9th Cir. 2014) (holding "conclusory statement that publication of the [court document] will  
5 injure the [designating party] in the industry and local community falls woefully short of  
6 the kind of showing which raises even an arguable issue as to whether it may be kept  
7 under seal") (internal quotation and citation omitted).

8 Here, the declaration on which defendant relies consists of general, conclusory  
9 statements, and, consequently, is insufficient to establish that any portion of the 4AC is  
10 properly filed under seal.<sup>4</sup> Moreover, defendant's designations appear overbroad, as  
11 some of the information designated confidential is publicly available in prior versions of  
12 the complaint or in portions of the current version that have filed in the public record.  
13 (Compare Third Amended Complaint at 15:18-27 with 4AC at 38:25-26; 4AC at 9:4-8 with  
14 4AC at 18:20-23; 4AC at 2:18-19 with 4AC at 32:12);<sup>5</sup> see Kamakana, 447 F.3d at 1184  
15 (affirming district court's decision denying request to seal portions of document that were  
16 "already publicly available").

17 Under the circumstances, rather than deny the motion at this time, the Court will  
18 afford defendant an opportunity to supplement its showing. Defendant's supplement, if  
19 any, shall be filed no later than March 4, 2019.

20 **IT IS SO ORDERED.**

21  
22 Dated: February 26, 2019.

  
MAXINE M. CHESNEY  
United States District Judge

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25 <sup>4</sup>Defendant's disclosure of the information under the terms of a protective order is  
26 not, by itself, sufficient to establish sealability. See Civil L.R. 79-5(d)(1)(A); see also Civil  
L.R. 79-5(e)(1).

27 <sup>5</sup>The above examples are intended to be illustrative rather than a comprehensive  
28 listing of all such instances.